IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3617 of 2006
To
FIRST APPEAL No. 3626 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SARADR SAROVAR NIGAM LTD & 1 - Appellant(s)
Versus
PATEL GANESHBHAI CHELABHAI - Defendant(s)

==========

Appearance :
MR PATHIK ACHARYA, AGP for Appellant(s) : 1 - 2.
MR AV PRAJAPATI for Respondent(s)-Claimant(s)

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 10/07/2007

ORAL JUDGMENT (Per: HON'BLE SMT.JUSTICE ABHILASHA KUMARI)

1. By filing the abovenumbered Appeals under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the common judgment and Award dated December 31, 2004, rendered by the learned Joint District Judge, 4th Fast Track Court, Patan, in Land Acquisition Reference Case Nos.1022/2002 to 1031/2002, by which, the claimants have been awarded additional compensation at the rate of Rs.50/- per sq.mt. over and above the compensation awarded to them by the Special Land Acquisition Officer by his Award dated November 27, 1997, at the rate of Rs.4.57 per. sq.mt. for their acquired lands.

2. A proposal was received by the State Government from Sardar Sarovar Nigam Limited, Gandhinagar, to acquire the lands of village Modhera, Taluka: Chanasma, District: Patan for the public purpose of construction of canal under the Narmada Canal Project. On

consideration of the said proposal, the State Government was satisfied that the lands of village Modhera mentioned therein were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Act was issued which was published in the official Gazette on July 6, 1995. The land owners were served with notices under Section 4 of the Act. They objected to the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government, as contemplated by Section 5A(2) of the Act. On scrutiny of the said report, the State Government was satisfied that the lands of village Modhera, specified in the notification published under Section 4(1) of the Act, were needed for the public purpose specified therein. Therefore, a declaration under Section 6 of the Act was issued which was published in the official Gazette on January 13, 1996. The interested persons were thereafter served with notices under Section

9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his Award dated November 27, 1997, offered compensation to the claimants at the rate of Rs.4.57 ps. per sq.mt. for their acquired lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications requiring the Special Land Acquisition to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Patan, where they were registered as Land Acquisition Reference Case Nos.1022/2002 to 1031/2002.

3. On behalf of the claimants, testimony of Mr.Ishwarbhai Ambarambhai Patel was recorded at Ex.18, whereas on behalf of the acquiring authorities, witness Mr.Rameshbhai Kacharabhai Prajapati, who was discharging duties as Deputy Mamlatdar, was examined at Ex.33 and witness Mr.Yogendrakumar Jawaharlal Gupta was examined at Ex.34.

4. Witness Mr.Ishwarbhai Ambarambhai Patel, in his testimony recorded at Ex.18, stated on behalf of the claimants that the lands acquired were even and fertile and had all facilities of irrigation and that the claimants were growing crops such as Millet, Cotton, Pulses, Juwar, Castor Seeds, Wheat, Cumin Seeds, Spogel, Fennel Seeds, etc. and were able to earn a substantial amount of income from the sale of those agricultural produces. According to this witness, the acquired lands were situated near residential societies and there was also a Petrol Pump in the vicinity as a result of which the lands

acquired had good potential for development. After stating that in village Modhera, famous Sun Temple was situated which was a historical monument, he went on to say that a lake was also constructed there which attracted tourists to that spot. It was further stated by him that every year, cultural programmes were organized at Modhera by the authorities and asserted that village Modhera was a developed place and was connected by road to Mehsana, Chanasma, Becharaji and Brahmanwada. According to this witness, all the facilities like water, electricity, telephone, bus service, etc. were available in village Modhera. This witness further deposed that the land admeasuring 501.66 sq.mts. forming part of Survey No.1119 of village Modhera was initially granted by the Collector, Mehsana, to Anarde Foundation at the tentative rate of Rs.40/- per sq.mt. vide order dated December 4, 1994, which rate was later on finalized by the Deputy Town Planner at Rs.65/- per

sq.mt. after taking into consideration the prevailing market price of the land on the date of order and that the Collector, Mehsana, vide order dated September 21, 1998, had deleted condition No.2 of the order dated December 4, 1994, requiring the applicant to file undertaking to make payment of difference in prices as the difference was paid by the applicant on September 1, 1998. The relevant order dated December 12, 1994, of the Collector, Mehsana, as well the subsequent order dated September 21, 1998, were produced by the witness, which were given Exhibits 13 and 14 respectively. The witness then stated that the land admeasuring 186 sq.mts. of Survey No.1245 Paiki of village Modhera was allotted by the Collector, Mehsana, to Umiya Kadva Patidar Trust at the rate of Rs.160/- per sq.mt. by his order dated October 16, 1998. The witness also produced a copy of this order which was given Ex.17. The witness asserted before the Court that the market value of the acquired

lands should be determined on the basis of the allotment of two parcels of land referred to above.

Though this witness was cross examined on behalf of the acquiring authorities, nothing substantial could be elicited nor could it be established that the sale-deed/s which was/were sought to be relied upon by the claimants for the purpose of claiming enhanced compensation were irrelevant and of no help to the claimants.

5. On behalf of the acquiring body, witness Mr.Rameshbhai Kacharabhai Prajapati, Deputy Mamlatdar, was examined at Ex.33. The witness stated that the Special Land Acquisition Officer had correctly assessed the market value of the lands acquired and that village Modhera was not a developed place nor industries were established nor the acquired lands had adequate facilities for irrigation. The witness further stated that the

Government lands sold to Anarde Foundation and Umiya Kadva Patidar Trust were non-agricultural lands.

In his cross-examination by the learned counsel for the claimants, the witness had to admit that though he was serving as Deputy Mamlatdar and was at present posted as Land Acquisition Officer, at the time when the proceedings for acquiring the lands in the instant case were initiated, he was not posted in the office concerned. The witness also admitted that he was not posted in the office at the time when notification in the instant case was published. The witness had to admit that he had not visited Modhera at the relevant point of time.

6. Another witness, i.e. Mr.Yogendrakumar Jawaharlal Gupta was examined on behalf of the acquiring body at Ex.34. This witness stated that he was serving as Deputy Executive Engineer in Harij Division of

Narmada Nigam since 1998, and that he had visited village Modhera since it came under his division. According to this witness, the lands of village Modhera were not even.

However, this witness, in his cross-examination, had to admit that he had no personal knowledge regarding the proceedings initiated for acquiring the lands in the instant case since he was not posted there at the relevant point of time.

7. From the record it transpires that at the stage of advancing oral arguments before the Reference Court, the learned advocate for the claimants produced two awards dated November 5, 2004, passed by the learned Civil Judge, Senior Division, Mehsana, in respect of acquisition proceedings of lands of village Mitha and village Balol, handed over to him by the claimants, in L.A.R.No.3230/2003 to 3233/2003 and L.A.R. No.3690/2003 to 3592/2003 respectively, wherein, the

Reference Court had awarded in all Rs.57/- per sq.mt. to the claimants for their acquired lands. The record further reveals that though these two awards relating to the lands of village Mitha and village Balol were produced before the Reference Court, the same were not exhibited by the Reference Court.

8. On the basis of evidence adduced by the parties, the Reference Court was of the opinion that both the awards of village Mitha and village Balol, which were adjoining villages to village Modhera, were relevant pieces of evidence and can be relied upon for determining the market value of the lands acquired from village Modhera. The reference Court has awarded additional amount of compensation to the claimants, on the basis of these two awards, by the impugned common Award, at the rate of Rs.50/- per sq.mt. for their acquired lands, giving rise to the abovenumbered Appeals.

9. This Court has heard Mr.Pathik M.Acharya, learned Assistant Government Pleader for the appellants and Mr.A.V.Prajapati, learned counsel for the claimant/ claimants in each Appeal. This Court has also considered the Record and Proceedings received from the Reference Court and also the paper-book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

10. It is relevant to notice that during the pendency of the present Appeals, the appellants had preferred Civil Applications No.6037/2007 to 6047/2007 under Order 41, Rule 27 of the Code of Civil Procedure, 1908, seeking permission of the Court to lead additional evidence at the appellate stage. The instant Appeals were admitted by the Division Bench by order dated October 4, 2006. However, thereafter the Gujarat High Court Rules, 1993, were amended by which

pecuniary jurisdiction of the learned Single Judge was raised to Rs.10,00,000/- and therefore, the Appeals with applications for additional evidence were placed before the learned Single Judge of this Court for hearing. However, later on by order dated April 26, 2007, the learned Single Judge has referred the matters to the Division Bench and that is how the matters have been dealt with by this Division Bench. The learned Single Judge (Coram: Jayant Patel, J.), vide order dated April 25, 2007, allowed the applications. The operative part of the order reads as under:

> *"6. Hence, in all the applications, the applicants are permitted to place on record the map which are proposed to be produced. They are also permitted to place on record the copies of the orders passed by this court in the other land situated in the nearby area, however, the applicability of such judgement in the subject matter of present first appeals, shall not be concluded and the same shall be finalized at the time when the first appeals*

are finally heard. Suffice it to say that the said judgements shall continue to remain on record of the first appeal at the time when the first appeals are to be finally heard.

7. Subject to the aforesaid observations and directions, applications are allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs."

11. Although the witness deposing on behalf of the claimants could not make good his assertion that the acquired lands were fertile and each claimant was earning a substantial amount from the sale of agricultural produces, the said fact is of little consequence, as the record does not indicate that the claimants had claimed compensation on the basis of yield. The claimants had relied upon two sale instances effected vide orders dated December 4, 1994, relating to Anarde Foundation and dated October 16, 1998, relating to Umiya Kadva Patidar Trust in support of their claim for enhanced compensation for their acquired

lands. As noticed earlier, during the course of arguments of References, the claimants had produced two previous awards pertaining to the lands acquired from adjoining villages Mitha and Balol which were taken into consideration by the Reference Court in order to determine the market value of the acquired lands.

12. The principles governing determination of market value of lands acquired are well-settled. In **Special Land Acquisition Officer, Davangere v. P.Veerabhadrappa etc. etc. - AIR 1984 SC 774**, the Supreme Court has emphasized that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of notification under Section 4(1) of the Act. What is ruled therein is that the methods of valuation are (1) opinion of experts, (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to

those acquired and possessing similar advantages and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. The Supreme Court has cautioned that normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. Applying these principles to the facts of the instant case, this Court finds that the claimants did not lead evidence of an expert nor enhanced compensation was claimed on yield basis to enable the Court to determine the market value of the lands acquired. The only relevant pieces of evidence produced by the claimants in the instant case are the sale-deeds relating to the grant of Government lands to Anarde Foundation at Ex.13 and to Umiya Kadva Patidar Trust at Ex.17 which will now be examined by this

Court.

Exhibit 13 is the order of Collector, Mehsana, dated December 4, 1994, whereby land admeasuring 501.66 sq.mts. forming part of Survey No.1119 of village Modhera was granted to Anarde Foundation pursuant to an application made by it for allotment of land for construction of office premises for development programme which was undertaken by the said Foundation in rural areas. A perusal of Ex.13 reveals that the land allotted to Anarde Foundation vide order dated December 4, 1994, was non-agricultural land. Initially, this land was allotted at the rate of Rs.40/- per sq.mt. However, it was stipulated in the said order that the market value of the land on the date of order, i.e. December 4, 1994, would be one which would be determined by the Deputy Town Planner and the price so determined would be considered to be relevant market value. The record reveals that the market value of the

land allotted to Anarde Foundation was determined at Rs.65/- per sq.mt., which is quite evident from the order dated September 21, 1998, passed by the Collector, Mehsana, produced at Ex.14.

The other sale instance relied upon by the claimants is to be found at Ex.17, which relates to sale of Government land to Umiya Kadva Patidar Trust. Exhibit 17 further shows that the Collector passed an order in this regard on October 16, 1998 and the market value of the land admeasuring 186 sq.mts. of part of Survey No.1245 of village Modhera, Taluka: Becharaji, was determined at the rate of Rs.160/- per sq.mt. On re-appreciation of evidence on the record, this Court finds that the notification under Section 4(1) of the Act in the instant case was published in the official gazette on July 6, 1995, whereas the sale instance at Ex.17 regarding allotment of Government land to Umiya Kadva Patidar Trust was effected after publication of said

notification and therefore, post notification instance should not be taken into consideration while determining the market value of the lands acquired as it is common knowledge that the prices of lands in the vicinity would escalate after the notification under Section 4(1) of the Act is published.

13. Similarly, reliance placed by the Reference Court on two previous awards of the Reference Court of the adjoining villages Mitha and Balol in order to determine the amount of compensation payable to the claimants is totally misplaced. It is relevant to notice that the awards pertaining to acquisition of lands of village Mitha and village Balol were produced by the claimants during the course of arguments before the Reference Court and they have not even been exhibited. Moreover, a scrutiny of the evidence on record as well as deposition of the witness for the claimants makes it very clear that he had not

referred to any of the previous Awards during the course of recording of his evidence nor it was brought on the record of the cases that the lands which were subject matter of two previous Awards were situated in the vicinity of the lands acquired in the instant cases or that they were similar in all respects to the lands acquired in the instant cases. Therefore, this Court is of the considered opinion that since there is no evidence on record establishing the comparability of the lands of villages Mitha and Balol to the presently acquired lands, the previous awards relating to lands of villages Mitha and Balol, which were relied upon by the Reference Court cannot be considered to be good pieces of evidence in order to arrive at the market value of the presently acquired lands.

14. As referred to earlier, the appellants had filed applications for additional evidence which were allowed by the learned Single

Judge. This Court shall therefore now consider the applicability or otherwise of the material produced by way of those applications to the present Appeals. The appellants have sought to produce one map showing details in respect of acquired lands and second map showing the exact location of the main canal as well as acquired lands. Having perused the said two maps, this Court is of the opinion that neither of them have any relevance in determining the market value of the acquired lands. The acquiring body has further produced judgment dated December 14, 2006 rendered by the Division Bench of this Court in First Appeals No.5035/2006 to 5047/2006 relating to the lands of village Dhanpura, which, according to them is approximately five to six kilometers away from village Modhera. The other judgment sought to be produced is also a judgment dated December 14, 2006, of the Division Bench of this Court rendered in First Appeals No.5048/2006 to 5066/2006 relating to

acquisition of lands from village Brahmanwada, which, according to the appellants, is at a distance of eight to nine kilometers from village Modhera.

15. It will be relevant to note that the general principle regarding production of additional evidence is that the appellate Court should not travel outside the record of the lower Court and cannot take any evidence in Appeal. However, Order 41, Rule 27 of the Code of Civil Procedure is an exception to the general rule whereby the parties may be permitted to lead additional evidence if the Court is of the opinion that conditions precedent set out therein are satisfied.

The test for admitting additional evidence has been laid down authoritatively by the Supreme Court in **Arjan Singh v. Kartar Singh and others – AIR 1951 SC 193** in which it has been held that the legitimate occasion for the application of Order 41, Rule 27 is when,

on examining the evidence as it stands, some inherent lacuna or defect becomes apparent, not where a discovery is made, outside the Court, of fresh evidence and the application is made to import it. The true test, therefore, is whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced?

Applying this test to the documents produced in evidence in the present case, this Court is of the view that the Judgments of the High Court permitted to be produced contrary to Judgment of the Supreme Court as additional evidence are hardly of any relevance for the purpose of determining the market value of the lands acquired in these cases. A perusal of these applications makes it very clear that it was not even averred that the lands which were subject matter of Judgments delivered by the High Court were similar in all respects to the lands acquired in these

cases and therefore furnished comparable instances. Therefore, this Court has no option but to disregard the additional evidence while determining the market value of the lands acquired in the instant cases. This leaves the Court to consider only one document of sale for determining the market value of the lands acquired, i.e. grant of the Government land to Anarde Foundation made vide order of the Collector, Mehsana, dated December 4, 1994.

16. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that the Reference Court could not have relied upon the previous awards of villages Mitha and Balol and the only relevant piece of evidence is the sale transaction effected vide order dated December 4, 1994, of the Collector, Mehsana, which is produced at Ex.13.

17. In the ultimate analysis, this Court is of

the opinion that the allotment of land vide order dated December 4, 1994, produced at Ex.13 passed by the Collector, Mehsana, is the only relevant piece of evidence which would enable the Court to determine the market value of the acquired lands. It is well-settled that for determination of compensation for a large area, rate fixed for smaller plot can be taken into consideration when there is absence of other material evidence (See: **Ravinder Narain and another v. Union of India (2003)4 SCC 481**). Therefore, this Court proposes to consider effect of Ex.13. As noticed earlier, the order allotting land dated October 16, 1998 (Ex.17) cannot be considered since it was passed after the issuance of the notification under Section 4 of the Act in the present acquisition proceedings. Exhibit 13, which is the order regarding grant of Government land to Anarde Foundation indicates that the lands which were subject matter of grant were non-agricultural lands. Moreover, the piece of

land was small compared to the acquired lands. Therefore, appropriate deductions will have to be made on account of the fact that the acquired lands in the instant case were agricultural lands and large tracts of lands were acquired.

It is a settled principle of law that where the acquired lands are agricultural lands, their valuation would differ to a considerable extent from the lands which are non-agricultural lands and that where a large area of land is subject matter of acquisition, certain deductions will have to be made if the market price of the acquired lands has to be determined on the basis of rate fixed for small plots. Moreover, some amount will have to be deducted towards development charges. After making deductions on the above counts, the market value of the lands acquired will have to be determined. Keeping the above principles in mind, this Court is of the opinion that interest of

justice would be served if 40% from the market price of the land which was subject matter of sale vide Ex.13 as on December 4, 1994, is deducted under the heads of smallness of plot, non-agricultural land and development charges collectively while determining the market value of the lands acquired in the instant cases. The market value of the land granted vide order dated December 4, 1994, has been determined at Rs.65/- per sq.mt. After deducting 40% from this amount, the amount that comes is Rs.39/- per sq.mt. The said sale took place vide order dated December 4, 1994, whereas the notification under Section 4 of the Act for the acquisition of lands of village Modhera was published on July 6, 1995. Therefore, there is a gap of about six months between the two. If 5% rise in price of land is given, the amount comes to Rs.41/- per sq.mt. which is the total amount of compensation to which the claimants are entitled. Thus, this Court is of the opinion

that the claimants would be entitled to compensation at the rate of Rs.41/- per sq.mt. and not at the rate of Rs.54.57 ps. per sq.mt. as held by the Reference Court.

18. In view of the above discussion, the Appeals will have to be partly allowed by holding that the claimants in the instant cases would be entitled to compensation in all at the rate of Rs.41/- per sq.mt. and to that extent, the Award rendered by the Reference Court will have to be modified.

19. For the foregoing reasons, all the Appeals succeed in part. The common Award dated December 31, 2004, rendered by the learned Joint District Judge, 4th Fast Track Court, Patan, in Land Acquisition Reference Case Nos.1022/2002 to 1031/2002, awarding compensation to the claimants at the rate of Rs.54.57 ps. per sq.mt. is hereby modified and it is held that the claimants would be entitled to compensation at the rate of

Rs.41/- per sq.mt. in all for their acquired lands. The other statutory directions given by the Reference Court in the impugned Award are not interfered with at all and are hereby confirmed. The Appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this Judgment immediately. The Record and Proceedings be sent back to the Reference Court at the earliest.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(sunil)